IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 1013 of 2004

Between:

1 Sri Sitaramanjaneya Temple and Village Development Society, Vegavaram,
rep by its Secretary
2 M. Hanumantharao
Vegavaram, Denduluru, W.G. District.

..... PETITIONERS

AND

1 The Mandal Revenue Officer, Denduluru, W.G. District.
2 The Sarpanch, Gopannapalem Gramapanchayat,
Denduluru Mandal, W.G. District.
3 The Executive Officer, Gopalapalem Gram Panchayat,
Denduluru Mandal, West Godavari District.
4 The Divisional Panchayat Officer, Denduluru Mandal,
West Godavari District.

(RR3 to 13 are deleted from Cause Title as per Court Order dt.22/1/04 in W.P. No.1013/04
RR3 & 4 are impleaded as per Court Order dt.5/3/04 in W.P.No.1013/04).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or orders or direction in the nature of Writ of Mandamus declaring the action of the respondents obstruction regarding development of the burial ground with all facilities situated in Vegavaram Village in an extent of 0-04cts in R.S.No. 9, by the village and violative of principles of natural justice.

Counsel for the Petitioners:MR.NARAM.NAGESWARA RAO

Counsel for the Respondent No.1 : GP FOR REVENUE

Counsel for the respondent Nos 2 & 3: G.P. for Panchayat Raj & Rural Development.

Counsel for the respondent No.4: Mr. B.P. Raju.

(Not Present)

The Court made the following :

ORAL ORDER:

(Per Hon'ble The Chief Justice)

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1 . Sri Sitaramanjaneya Temple and Village Development Society, Vegavaram, represented by its Secretary and M. Hanumantha Rao of the same village filed this petition as public interest litigation initially impleading 13 respondents. Names of respondents 3 to 13 were ordered to be deleted by order dated 22.01.2004. Respondents 3 and 4 were added as parties by order dated 05.03.2004. Counter affidavits have been filed by Sri P.Govaraiah, Mandal Revenue officer, Denduluru Mandal, Smt. K.Nagalamma, Sarpanch of Goppannapalem Gram Panchayat, Sri P.Venkateswara Rao, Panchayat Secretary, Gopannapalem Gram Panchayat and Sri A. Naga Raju, District Panchayat Officer, West Godavari.

2 . Petitioners sought a writ of Mandamus to declare the action of the respondents in obstructing regarding development of the burial ground with all facilities situated at Vegavaram village in an extent of Ac.0-40 cents in Revenue Survey No.9 as illegal.

3. By order dated 05.03.2004 we asked respondent No.2 to file sketch of the burial ground which was stated to be situated in residential locality, and the site to which the burial ground was sought to be shifted. This order was agitated because in the affidavit of 1st respondent dated 25.02.2004 it was mentioned that Revenue Survey No.9 of Vegavaram to an extent of Ac.1-31 cents is Government land, classified as Cart Track Poramboke and no land is earmarked for burial ground, nor has the classification of the land has been changed by the District Collector. However, an extent of Ac.0.40 cents of land in Revenue Survey No.9 is shown as encroachment in Adangals and is the portion of Cart Track Poramboke being used as burial ground by the villagers of Vegavaram village. He also pointed out that certain persons living in Masidupadu area, which also forms part of Vegavaram village, objected to the land being used as burial ground on the ground that it was causing health problem and frequently two sections of people were indulging in activities leading to law and order situation over the dispute pertaining to use of the land as burial ground. Criminal cases were also pending. It is also pointed out that works that are taken up under Janmaboomi program relate to the Panchayat Raj Department and the Revenue Department has no role to play.

4 . Respondent No.2 had also filed an affidavit stating that writ petition was motivated one and the writ petitioners were leading a body of people for individual benefit and the other group was agitating to shift the burial ground to any lonely place since the present burial ground is located in the middle of the residential houses of Daliths i.e., Scheduled Castes. It is stated that originally the land was a bullock cart track/way. It is used as burial ground by

Vegavaram villagers. It is an unlicensed burial ground. Affidavit also gave distance from burial ground to the residential locality, which would show that burial ground is situated in the middle of the residential locality. Section 89 of A.P. Panchayat Raj Act, 1994, prohibits against burning of bodies in unlicensed places. Respondent No.2 further stated that alternate site has been selected for burial ground. The stand taken by him is as follows:

> " Burial ground is unlicensed and it is situated in the middle of the residential houses. Everyday about 100 school going children should go on the way of the burial ground to attend the school. After cremation of dead body, empty flower baskets are thrown away to the trees, by seeing the empty flower baskets also some times children are suffering from fever and whenever dead body is burnt, children are fearing to go to school and staying at home. Due to that children are psychologically affected. I humbly submit that at the outskirts of Maseedupadu village, poramboku land to an extent Ac.1.80 cents is Devarachervu Ayakut. It is suitable and unobjectionable place for burial ground. It is also lonely place".

5 . Pursuant to the order dated 05.03.2004, sketch map was produced on record.

6. In the affidavit of Panchayat Secretary, Gram Panchayat Gopannapalem, it is pointed out that some villagers of Maseedupadu and patta holders in R.S.No.11/1 of Veegavaram village raised objection for the construction of shed sanctioned in Janmabhoomi and requested to shift the burial ground from the present place, to which Veegavaram villagers raised objection for shifting. There were law and order problems and criminal cases were also registered.

7 . On 19.03.2004, after noticing the stand taken by the parties, this Court directed the District Panchayat Officer to visit the village in the presence of villagers of Vegavaram and Maseedupadu villages and examine the present site of burial ground and the alternate site as shown in the sketch map by 2nd

respondent. District Panchayat Officer was directed to visit the site after notice to the parties and submit report to the Court about the suitability of the alternate site or whether the burial ground can be continued to remain in the present site.

8. District Panchayat Officer submitted a report by way of affidavit stating that present burial ground site is about 100 meters to the village Vegavaram and the site was being used as burial ground for the last 40 to 50 years, whereas pattas to the adjoining site were issued subsequently to the members of Dalith community somewhere in the year 1991-92. Some of them were given enjoyment certificates by Revenue Department through State Housing Corporation during the year 2002 in Revenue Survey No.8 of Vegavaram village adjacent to the site of burial ground, but no houses came to be constructed subsequently knowing fully well the distance of the burial ground. Then he mentioned about the nature of the land recorded in the revenue records and also about the views of the respective villagers who had been using the burial ground saying that:

> " The classification of survey numbers 8 and 9 are mentioned as "BANDI DARI PORAMBOKE" as per Revenue Records. The extent of Ac.0.40 cents was marked in Adangals as burial ground. But the original classification was not changed as burial ground in the Revenue Records. As ascertained from the public, this road is being used by the school going children, farmers and other public of Maseedupadu village to Vegavaram. It is also stated that they could not move through that road at the time of cremation of bodies as there is pollution and the school going children are afraid of the seen, as it is very nearer to the said road. This burial ground is used by the B.C. and other community people. Most of the villagers of Maseedupadu belongs to SCs".

9. District Panchayat Officer also inspected the alternate site proposed by the Sarpanch situated in R.S.No.65/13 and stated that after giving pattas to Freedom Fighters, Ac.33.43 cents of site is still lying vacant. Alternate site is about 1.5 k.m., from Vegavaram village and villagers have to pass through Maseedupadu village. He also pointed out that said Devara Cheruvu is a minor irrigation tank and there exists about 300 acres of land. As per the revenue records, no burial ground was earmarked in Vegavaram village and the burial ground in R.S.No.9 measuring Ac.0.40 cents is being used mainly by B.C. community since long back. Houses surrounding burial ground came into existence subsequently and as per the revenue records, there is no other alternate site available for earmarking the land for burial ground. It was pointed out that Rs.80,000=00 has been sanctioned in Janmabhoomi funds for the development of the burial ground situated in R.S.No.9.

10. Noticing all these facts, case was adjourned for further consideration. Respondents 1 and 2 were given sometime to have instructions and now Smt. D. Sarojini, Mandal Revenue Officer, Denduluru Mandal, has come out with a proposal. It is stated in the reply affidavit that the site in R.S.No.65/13 is a minor irrigation tank and the proposal of the Sarpanch to shift burial ground was objectionable. As such, there is no other option left except to develop R.S.No.9 which was already being used as burial ground before the residential houses and Maseedupadu came into existence and that the burial ground will be developed as such by constructing a

compound wall with a gate separating from the residential area. Mandal Revenue Officer also testified that there is no other suitable site for shifting the burial ground. An amount of Rs.80,000=00 has been granted for developing the burial ground.

11. In the view aforementioned, in such like petition filed as public interest litigation, no other order or further direction deserves to be issued except directing the authorities to develop the burial ground located in R.S.No.9 to the extent of Ac.0.40 cents in such a manner that compound wall with a height of 8 feet is constructed separating it from the residential houses which have been constructed knowing fully well the distance of burial ground. Further, the respondents are directed not to interfere with the petitioners' houses while constructing the compound wall for the purpose of burial/cremation ground.

11. With the above directions, writ petition stands disposed of. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 17.08.2004.

VRK.

To

1 The Mandal Revenue Officer, Denduluru, W.G. District.
2 The Sarpanch, Gopannapalem Gramapanchayat, Denduluru Mandal, W.G. District.
3 The Executive Officer, Gopalapalem Gram Panchayat, Denduluru Mandal, West Godavari District.
4 The Divisional Panchayat Officer, Denduluru Mandal, West Godavari District.

5. The Officer concerned, Public Interest Litigation Cell, High Court Buildings, Hyderabad.

6. Two CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

7. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad (OUT)

8. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.P.NO. 1013 OF 2004.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 17.08.2004.

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